THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Date: 23—08—2005

W.P. No. 6934 of 2005

Between:

K.K. Rao Engineering Works Pvt. Ltd.,

Uppal, Hyderabad and others.

…Petitioner.

A n d

The Superintendent of Central Excise,

Service Tax Range, Hyderabad and others

…Respondents.

THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

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O R D E R: (per Sri B. Sudershan Reddy, J)

The petitioners pray for issuance of a writ of Mandamus declaring that Chapter V of the Finance Act, 1994 has no application to the petitioners who claim to be attending to repairs of the failed distribution transformers, entrusted to the petitioners by respondents 2 to 6 herein, under the contract agreement. They accordingly pray for issuance of consequential direction, directing the 1st respondent not to insist upon the petitioners to file the returns and not to take coercive action against the petitioners.

The provocation for filing of this writ petition is the proceedings dated 10.8.2004 issued by the Additional Commissioner of Customs & Central Excise directing the Superintending Engineer, Operation and Maintenance, A.P. Central Power Distribution Company Limited, Medak requesting the authority to furnish a list of all contracts entered into by the CPDCL within his jurisdiction, along with the names and addresses of the contractors and the amounts paid to them from 1.7.2003. The authority was accordingly requested to insist on the contractors to register themselves with Central Excise under Service Tax law before entering into the contract.

There is no dispute whatsoever that pursuant to the letter dated 10.8.2004 the petitioners herein, claimed to be the rate contractors, registered themselves with the Central Excise under Service Tax Law. In this writ petition, however, the petitioners contend that Chapter V of the Finance Act, 1994 is not applicable sofar as the petitioners are concerned since they do not provide any service to a customer in relation to maintenance of repairs. The respondents 3 to 6 herein cannot be characterized as the customers of the petitioners. The repair works that were undertaken by the writ petitioners are pursuant to rate contracts entered into between them and the companies in respect of the failed distribution transformers alone. Those failed distribution transformers are entrusted to the petitioners for repairs only. There is no contract of any maintenance or repairs in respect of Transformers.

While adverting to this aspect of the matter, in the

counter affidavit filed by the Additional Commissioner of Customs and Central Excise it is stated “the petitioners never approached the department with their submissions before filing this writ petition. There are also other alternative departmental remedies like appeals available to the petitioners”. In such view of the matter, we are not inclined to express our opinion on any of the contentions raised by the petitioners in this writ petition. Interest of justice would be met by directing the petitioners herein to raise those objections before the competent authority within three weeks from today and those objections shall be taken into consideration by the competent authority and a speaking order shall be passed along with the demand of service tax, if any, liable to be paid by the petitioners. The respondents shall pass such order within a period of four weeks from the date of receipt of such objections from the petitioners. There shall be an order accordingly.

The writ petition is accordingly disposed of without any order as to costs.

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B. Sudershan Reddy, J.

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Ramesh Ranganathan, J.

Date: 23—08—2005.

Note:

C.C. in three days.

(BO)

MVB.